

CHAPTER 49

TRANSPORTATION OF HAZARDOUS MATERIALS

Authority

N.J.S.A. 27:1A-5, 27:1A-6 and 39:5B-26 and 31.

Source and Effective Date

R.2005 d.163, effective April 22, 2005.
See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

Chapter Expiration Date

In accordance with N.J.S.A. 52:14B-5.1c, Chapter 49, Transportation of Hazardous Materials, expires on October 19, 2010. See: 42 N.J.R. 1339(a).

Chapter Historical Note

Chapter 49, Transportation of Hazardous Materials, was adopted as R.1985 d.123, effective March 18, 1985. See: 16 N.J.R. 2979(a), 17 N.J.R. 712(a).

Pursuant to Executive Order No. 66(1978), Chapter 49, Transportation of Hazardous Materials, was readopted as R.1990 d.156, effective February 8, 1990. See: 22 N.J.R. 21(a), 22 N.J.R. 837(c).

Pursuant to Executive Order No. 66(1978), Chapter 49, Transportation of Hazardous Materials, was readopted as R.1995 d.74, effective January 12, 1995. See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Pursuant to Executive Order No. 66(1978), Chapter 49, Transportation of Hazardous Materials, was readopted as R.2000 d.7, effective December 7, 1999. See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

Subchapter 3, Hazardous Materials Restrictions in the Route 29 Tunnel Facility was readopted as R.2002 d.4, effective January 7, 2002. See: 33 N.J.R. 3627(b), 34 N.J.R. 284(a).

Chapter 49, Transportation of Hazardous Materials, was readopted as R.2005 d.163, effective April 22, 2005. See: Source and Effective Date. See, also, section annotations.

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SUBCHAPTER 1. GENERAL REQUIREMENTS

16:49-1.1 Purpose and definitions

(a) This chapter governs the transportation of hazardous materials in the State of New Jersey, regulates the shipping, packaging, marking, labeling, placarding, handling, and transportation of hazardous materials, and, to the maximum extent practicable, conforms to the requirements of the regulations issued by the United States Department of Transportation. The purpose of this chapter is to protect public safety, health, and welfare from unreasonable risks of the transportation of hazardous materials in New Jersey.

(b) The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

“Commissioner” means the Commissioner of the New Jersey Department of Transportation.

“Department” means the New Jersey Department of Transportation.

“Person(s),” pursuant to 49 C.F.R. Ch.1, § 171.8 citing 1 U.S.C. § 1 and 49 U.S.C. § 5102(9), means an individual, corporation, company, association, firm, partnership, society, joint stock company; or a government, Indian tribe, or authority of a government or tribe offering a hazardous material for transportation in commerce or transporting a hazardous material to support a commercial enterprise. This term does not include the United States Postal Service or, for purposes of 49 U.S.C. §§ 5123 and 5124, a Department, agency, or instrumentality of the government.

Amended by R.1990 d.550, effective November 19, 1990.
See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Stylistic changes.

Amended by R.2005 d.163, effective May 16, 2005.
See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

Rewrote the section.

16:49-1.2 Application

(a) This chapter shall apply to:

1. Every person(s) involved or in any manner related to the transportation of interstate and/or intrastate commerce, shall comply with and be bound by these regulations or any future amendments, and shall take such measures as are necessary to insure compliance therewith.

2. All person(s) involved or concerned with the management, maintenance, operation or driving of vehicles, shall be conversant and knowledgeable with the rules and regulations set forth in this chapter.

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

In (a), substituted "person(s)" for "shipper and motor carrier and its officers, drivers, agents, employees, and representatives" following "Every" in 1, substituted "person(s)" for "officers, agents, representatives, drivers, and employees of shippers and carriers" preceding "involved or concerned" in 2.

Case Notes

State law governing transportation of hazardous materials preempted enforcement of city resolution. Consolidated Rail Corp. v. City of Bayonne, D.N.J.1989, 724 F.Supp. 320.

16:49-1.3 General requirements

(a) Person(s) that do not comply with the requirements of this chapter shall not transport hazardous materials, offer hazardous materials for transport, or accept hazardous materials for transport.

(b) Vehicles, railroad cars, containers, shipping records, carrier records, and places of origin in the State involved in the transportation of hazardous materials, substances, or wastes are subject to inspection by duly authorized representatives of the Division of State Police as may be necessary to carry out the provisions of N.J.S.A. 39:5B-25 et seq., and the regulations adopted supplementary thereto. Inspections shall be conducted as follows:

1. The Division of State Police, or personnel duly authorized by the Superintendent of the State Police, may break cargo seals on vehicles during the course of an inspection of the carrier's equipment under this chapter. Under no circumstances will U.S. Postal Service or Department of Defense seals or locks be broken for the purpose of inspecting cargo within any vehicle. If cargo is protected with a seal from any other U.S. Government agency, prior permission shall be obtained from such agency before removal of the seal.

2. Self-locking cargo seals inscribed with the appropriate New Jersey State agency designation and sequential number shall be affixed by the enforcement personnel to replace any cargo seal removed for inspection. In the event that the contents of a vehicle having no cargo seal, or a broken cargo seal, are inspected, the inspecting agency's cargo seal shall not be applied upon completion of the inspection.

3. Seals on tank vehicles shall not be broken except in an emergency situation which poses an immediate hazard to the public, as determined by the State Police, or personnel authorized by the Superintendent of State Police.

4. In the event that a cargo seal is to be broken for the purpose of inspecting the vehicle contents, the owner, operator, driver or yardmaster shall be requested to observe the inspection and sign the inspection report. The signature of a witness, preferably a New Jersey State Police Officer, will also be obtained.

5. Procedures to be used in conducting such inspections shall be as specified by the New Jersey State Police.

(c) No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of the New Jersey Department of Transportation unless such container or package meets the requirements of this chapter.

(d) The New Jersey Department of Transportation will recognize an exemption or renewal thereof issued by the United States Department of Transportation under Section 107, Subpart B of Title 49 subject to review by the New Jersey Department of Transportation. Any person operating under a current, valid exemption or renewal thereof under Section 107 subject to review by the New Jersey Department of Transportation will be deemed to be in compliance with those portions of these regulations to which the exemption applies, provided that the person is complying with the terms of the exemption.

(e) Intrastate carriers and shippers desiring exemptions shall be subject to the same rules and procedures required of interstate carriers and shippers. See Title 49, Code of Federal Regulations, Part 107, Subpart B. Also see N.J.A.C. 16:49-1.3(k) herein.

(f) Whenever the term "interstate" is used in the Federal regulations adopted and incorporated by reference herein it shall, for the purpose of these regulations, mean and include both "interstate" and "intrastate" transportation in commerce, except where stated otherwise.

(g) The modes of transportation by air, water, or pipeline are governed by other agencies and other Federal regulations and are not under the jurisdiction of the Department. Thus, any portion of the Federal regulations governing transportation of hazardous materials by air, water, or pipeline within Parts 107, 171, 172, 173, 174, 177, 178, 179 and 180 are hereby excluded and not adopted and incorporated by reference by the Department.

(h) This chapter establishes minimum standards which must be complied with in conjunction with the transportation of hazardous materials. Therefore, in the event of a conflict between this chapter and any other State regulation, the stricter, more stringent standard shall apply and govern. This chapter is intended to complement, and not to limit, those related statutory and regulatory provisions of the New Jersey Department of Environmental Protection regarding hazardous wastes, radioactive materials, spill compensation and control.

(i) This chapter may be amended from time to time by the New Jersey Department of Transportation.

1. The Federal "Hazardous Materials Regulations" referenced herein, are adopted and incorporated by reference as revised as of October 1, 2004 and any supplements and revisions thereof.

2. The Federal Highway Administration, United States Department of Transportation, supplements and amends the Federal Motor Carrier Safety Regulations, the Appendices to the Federal Motor Carrier Safety Regulations, and the Federal Hazardous Materials Regulations, on a continuing basis pursuant to the Federal Administrative Procedure Act (5 U.S.C. § 554 et seq.) and authority granted to the Secretary, pursuant to 49 U.S.C. App. § 2505. Supplements and amendments are published as a notice of proposed rulemaking in the Federal Register and are subject to a period of public comment prior to their adoption. Adoption of supplements and amendments by a final rule action appear in the Federal Register and indicate an effective date for their implementation and enforcement. The Department will hereafter rely upon the notices of proposed rulemaking and final actions published in the Federal Register supplementing and amending the Federal Motor Carrier Safety Regulations, Appendices to the Federal Motor Carrier Safety Regulations, and the Federal Hazardous Materials Regulations, as notice to all interested parties and all persons or entities affected by these regulations. Final rule actions supplementing and amending the Federal Motor Carrier Safety Regulations, Appendices to the Federal Motor Carrier Safety Regulations, and the Federal Hazardous Materials Regulations, will hereafter be considered as adopted and incorporated, by reference, herein, upon their publication in the Federal Register, and will become effective on the effective date as published in the Federal Register. Any modification, revision, amendment, delay in implementation, or omission by the Department of any Section(s), Subparts(s), or Part(s) of the Federal Motor Carrier Safety Regulations, Appendices to the Federal Motor Carrier Safety Regulations, and the Federal Hazardous Materials Regulations, and all supplements and amendments thereto will be subject to a separate notice of proposed rulemaking, pursuant to the New Jersey Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq.

(j) If any provision or clause of this chapter is held invalid to any person or circumstance, such invalidity shall not affect other provisions or applications of the regulation which can be given effect without the invalid provision or application. To this end the provisions of this regulation are declared to be severable.

(k) This chapter or any portion or portions thereof may be waived by the New Jersey Department of Transportation if after consideration of the facts involved it is determined that a particular situation warrants such waiver. This provision shall apply to intrastate movements only. Application shall be made in writing to the Commissioner of Transportation before the subject materials are offered for transporta-

tion. The written application shall set forth the full circumstances and facts of the case. The applicant(s) shall not have the right to a hearing. Application shall only be made in cases of unique circumstances or hardship.

Amended by R.1986 d.447, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Added text to (h) "and not to limit".

Amended by R.1989 d.101, effective February 21, 1989.

See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Changed date from November 1, 1985 to October 1, 1987.

Amended by R.1990 d.550, effective November 19, 1990.

See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Clarification regarding jurisdiction added; (f), on combustible liquids, deleted.

Amended by R.1991 d.208, effective April 15, 1991.

See: 23 N.J.R. 55(b), 23 N.J.R. 1148(a).

Inspection of hazardous materials and cargo seal requirements added at (b)1.

Amended by R.1993 d.235, effective June 7, 1993.

See: 25 N.J.R. 1065(a), 25 N.J.R. 2497(a).

Amended by R.1995 d.74, effective February 6, 1995.

See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Amended by R.2000 d.7, effective January 3, 2000.

See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

In (i), changed date in 1, and inserted references to the Federal Hazardous Materials Regulations throughout 2.

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

Rewrote (a); in (b), inserted "duly" following "or personnel" in 1; in (i), substituted "October 1, 2004 and any supplements and revisions thereof" for "April 1, 1999" following "as revised" in 1; inserted reference to "and incorporated by reference" throughout.

16:49-1.4 Penalty for violation of these provisions

(a) The penalty for a violation of these provisions including the Federal regulations adopted and incorporated by reference in N.J.A.C. 16:49-2 and herein shall be as specified under N.J.S.A. 39:5B-25 et seq., as amended.

(b) Each violation shall be treated separately. When the violation is a continuing one, each day of the violation constitutes a separate offense.

Amended by R.1986 d.477, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Added "as amended."

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

In (a), inserted "adopted and" following "Federal regulations".

16:49-1.5 Document availability

(a) Copies of the Federal "Hazardous Materials Regulations," Title 49, Code of Federal Regulations, Parts 171, 172, 173, 174, 177, 178, 179, and 180 referenced herein may be purchased from the places listed below. The "Federal Motor Carrier Safety Regulations," Title 49, Code of Federal Regulations, Part 380 and 382 and Parts 390 through 397, and the Federal Register and all supplements and amendments thereto, as adopted and incorporated by reference may also be purchased at the places listed below.

1. United States Government:

i. Superintendent of Documents

U.S. Government Printing Office
732 N. Capitol Street, NW
Mail stop: SDE
Washington, DC 20401
(888) 293-6498
www.gpoaccess.gov/

ii. U.S. Government Bookstore

U.S. Government Printing Office
710 N. Capitol Street, NW
Washington, DC 20401
(202) 512-0132
<http://bookstore.gpo.gov/>

iii. U.S. Department of Transportation

Research and Special Programs Administration
Hazardous Materials Information Center
1-800-467-4922
email: infocntr@rspa.dot.gov
<http://www.rspa.dot.gov>

The Hazardous Materials Safety home page can be accessed at <http://hazmat.dot.gov>.

2. Non-governmental sources (Note: The inclusion of a non-governmental source in this paragraph does not constitute an endorsement or recommendation of the product or service offered, sold, or provided by that source or the accuracy of the information said to be contained therein. Non-governmental sources are listed solely as a convenience to interested parties.):

i. American Trucking Associations

2200 Mill Road
Alexandria, VA 22314-4677
(888) 333-1759
www.truckline.com

ii. J.J. Keller & Associates

3003 West Breezewood Lane
P.O. Box 368
Neenah, WI 54976
(877) 564-2333
www.jjkeller.com

iii. Regulations Management Corporation

1505 Arlington Road
Bloomington, IN 47404-0809
1 800 433-3734
www.regman.com

iv. New Jersey Motor Truck Association

160 Tices Lane
East Brunswick, NJ 08816
(732) 254-5000
Fax: (732) 613-1745
www.njmta.org

(b) Copies of the Federal "Hazardous Materials Regulations" and the "Federal Motor Carrier Safety Regulations" are available for review at the following public libraries:

1. New Jersey State Library

185 West State Street
Trenton, NJ 08625
(609) 292-6220
<http://www.njstatelib.org>

2. Newark Public Library

5 Washington Street
Newark, NJ 07101
(973) 733-7784
www.npl.org

3. Jersey City Free Public Library

Federal Documents, 4th Floor
472 Jersey Avenue
Jersey City, NJ 07302
(201) 547-4517
<http://www.jclibrary.org>

4. New Brunswick Public Library

60 Livingston Avenue
New Brunswick, NJ 08901
(732) 745-5108
<http://www.lmxac.org>

5. Trenton Public Library

120 Academy Street
Trenton, NJ 08608
(609) 392-7188
<http://www.trenton.lib.nj.us>

6. Camden County Public Library

203 Laurel Road
Voorhees, NJ 08043
(609) 772-1636
<http://www.camden.lib.nj.us>

7. Cherry Hill Public Library

1100 North Kings Highway
Cherry Hill, NJ 08034
(609) 667-0300
<http://www.cherryhill.lib.nj.us>

(c) Copies of the Federal "Hazardous Materials Regulations" and the "Federal Motor Carrier Safety Regulations" noted above are further available for review at the New Jersey Department of Transportation, Bureau of Freight Services, 1035 Parkway Avenue, Trenton, NJ 08625. Hours at this office are 8:30 A.M. to 5:00 P.M., Monday through Friday. This office may be contacted at (609) 530-8026.

Amended by R.1986 d.447, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Revised date from 1983 to 1985; changed phone numbers.

Amended by R.1989 d.101, effective February 21, 1989.

See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Amended by R.1990 d.550, effective November 19, 1990.

See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Stylistic changes.

Amended by R.1993 d.235, effective June 7, 1993.

See: 25 N.J.R. 1065(a), 25 N.J.R. 2497(a).

Amended by R.1995 d.74, effective February 6, 1995.

See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Amended by R.2000 d.7, effective January 3, 2000.

See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

Rewrote the section.

16:49-1.6 Assistance

(a) For general assistance and procedural questions in matters related to the rules of this chapter, as adopted herein, contact:

Bureau of Freight Services
New Jersey Department of Transportation
PO Box 600
Trenton, NJ 08625
(609) 530-8026

(b) For assistance in matters related to enforcement or interpretation of the Hazardous Materials Regulations, contact:

Hazardous Materials Transportation Enforcement Unit
New Jersey Division of State Police
PO Box 7068
West Trenton, NJ 08628
(609) 882-2000, extension 2764

(c) Statements or opinions provided by the Bureau of Freight Services or by the Division of State Police do not constitute legal advice.

Amended by R.1986 d.447, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Amended address.

Amended by R.1989 d.101, effective February 21, 1989.

See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Phone number changed.

Amended by R.1990 d.550, effective November 19, 1990.

See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Stylistic changes.

Amended by R.1995 d.74, effective February 6, 1995.

See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

In (a), substituted "the rules of this chapter" for "New Jersey's Hazardous Materials Regulations"; in (c), deleted "Ports, Terminals and" following "Bureau of"; amended the address throughout.

SUBCHAPTER 2. ADOPTION OF PORTIONS OF TITLE 49, CODE OF FEDERAL REGULATIONS, BY REFERENCE, AND ADOPTION AND INCORPORATION, BY REFERENCE, OF FEDERAL MOTOR CARRIER SAFETY REGULATIONS WHEN ADOPTED, AMENDED, OR SUPPLEMENTED BY THE FMCSA

16:49-2.1 Parts adopted and incorporated by reference

(a) The New Jersey Department of Transportation, pursuant to N.J.S.A. 39:5B-25 et seq., hereby adopts and incorporates by reference the following portions of Title 49 Transportation, Code of Federal Regulations, revised as of October 1, 2004 and any supplements and revisions thereto. The parts adopted and incorporated by reference are found in Chapter 1, referred to as "Research and Special Programs Administration, Department of Transportation." The portions adopted and incorporated are summarized below.

1. Part 171—General Information, Regulations, and Definitions. (Sections 171.1, 171.4, 171.5, 171.6 and 171.20 are omitted from adoption herein; modifications are made to Sections 171.15 and 171.16).

2. Part 172—Hazardous Materials Table, Special Provisions, Hazardous Materials Communications, Emergency Response Information, and Training Requirements. (Modifications are made to Section 172.3.)

3. Part 173—Shippers—General Requirements for Shipments and Packagings (Section 173.32a is excluded from adoption herein).

4. Part 174—Carriage by Rail.

5. Part 177—Carriage by Public Highway.

6. Part 178—Specifications for Packagings.

7. Part 179—Specifications for Tank Cars. (Sections 179.3, 179.4, and 179.5 are excluded from adoption herein.)

8. Part 180—Continuing Qualification and Maintenance of Packagings.

(b) The Parts and Appendices of the Federal Motor Carrier Safety Regulations and all supplements and amendments thereto, adopted as a final rule action by the Federal Motor Carrier Safety Administration, United States Department of Transportation, and adopted and incorporated by reference herein by the Department, are summarized below.

1. Part 380—Special Training Requirements

2. Part 382—Controlled Substances and Alcohol Use and Testing.

3. Part 390—Federal Motor Carrier Safety Regulations: General.

4. Part 391—Qualification of Drivers.

5. Part 392—Driving of Commercial Motor Vehicles.

6. Part 393—Parts and Accessories Necessary for Safe Operation.

7. Part 394—(Removed and Reserved).

8. Part 395—Hours of Service of Drivers.

9. Part 396—Inspection, Repair, and Maintenance.

10. Part 397—Transportation of Hazardous Materials; Driving and Parking Rules.

11. Part 177—Carriage by Public Highway.

12. Part 178—Specifications for Packagings.

13. Part 179—Specifications for Tank Cars.

14. Part 180—Continuing Qualification and Maintenance of Packagings.

(c) Supplements and amendments to the Federal Motor Carrier Safety Regulations, Appendices to the Federal Motor Carrier Safety Regulations, and the Federal Hazardous Materials Regulations, which have been adopted as a final rule action by the Federal Motor Carrier Safety Administration and become effective after October 1, 2004, are not listed in this section. Those supplements and amendments are, pursuant to the above, adopted and incorporated by reference herein as if set forth in full. The full text of such supplements and amendments can be found by examining the Federal Register published after the above noted date. See also N.J.A.C. 16:49-1.5, Document availability, and N.J.A.C. 16:49-1.6, Assistance.

(d) The following provisions adopted and incorporated by reference are modified as set forth below:

1. 49 C.F.R. 171.15 is modified to state the following. (Note: Paragraph (a) has been changed and paragraph (d) has been added.)

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) or paragraph (d) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which—

(1) As a direct result of hazardous materials;

i. A person is killed; or

ii. A person receives injuries requiring his or her hospitalization; or

iii. Estimated carrier or other property damage exceeds \$50,000; or

iv. An evacuation of the general public occurs lasting one or more hours; or

v. One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

vi. The operation flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also ss 174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported in accordance with (b) and (d) of this section.

(b) Each notice required by paragraph (a) of this section shall be given to the National Response Center (NRC) on 800-424-8802 (toll free) or 202-267-2675 (toll call). Notice involving etiologic agents may be given to the Director, Centers for Disease Control and Prevention, U.S. Public Health Service, Atlanta Georgia, Area Code 800-232-0124, in place of the notice to the U.S. Department of Transportation or (toll call) on 202-267-2675. Each notice must include the following information:

(1) Name of reporter.

(2) Name and address of carrier represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Classification, name, and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by Section 171.16.

(d) If a New Jersey Police Accident Report has been filed with the New Jersey Motor Vehicle Commission, or if a Spill Report has been filed with the New Jersey Department of Environmental Protection, then reports requested above in paragraphs (b) and (c) are not required of intrastate carriers who are not under the jurisdiction of U.S.D.O.T. All other carriers are subject to the U.S.D.O.T. reporting requirements as usual.

2. 49 C.F.R. 171.16 is modified to state the following: (Note: Paragraph (a) and (b) have been changed and paragraph (e) has been added.)

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form 5800.1 (01/2004) to the U.S. Department of Transportation within 30 days of the date of discovery, unless the requirements of paragraph (e) in this section are met, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which any of the circumstances set forth in Section 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge—

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (F 5800.1) (01/2004).

(b) Each carrier making a report under this section shall send that report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590-0001. A copy of the report shall be retained for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in writing by an agency of the U.S. Department of Transportation.

(c) Except as provided in paragraph (d) of this section, the requirements of paragraph (a) of this section do not apply to incidents involving the unintentional release of hazardous materials being transported under the following proper shipping names:

- (1) Consumer commodity.
- (2) Battery, electric storage, wet, filled with acid or alkali.
- (3) Paint and paint related material when shipped in packagings of five gallons or less.

(d) The exceptions to incident reporting provided in paragraph (c) of this section do not apply to:

(1) Incidents required to be reported under Section 171.15(a);

(2) Incidents involving transportation aboard aircraft; nor

(3) Incidents involving the transportation of hazardous waste.

(e) If a New Jersey Police Accident Report has been filed with the New Jersey Motor Vehicle Commission or if a Spill Report has been filed with the New Jersey Department of Environmental Protection, then other reports requested in this section are not required of intrastate carriers who are not under the jurisdiction of U.S.D.O.T. All other carriers are subject to the U.S.D.O.T. reporting requirements as usual.

3. 49 C.F.R. 172.3 is modified to state the following: (Note: Paragraph (a) has been changed)

(a) This part applies to—

(1) Each person who offers a hazardous material for transportation; and

(2) Each carrier by highway or rail who transports a hazardous material.

(b) When a person other than one of those provided for in paragraph (a) of this section, performs a packaging, labeling or marking function required by this part, that person shall perform the function in accordance with this part.

4. 49 C.F.R. 177.804. Motor carriers and other persons subject to this part shall comply with 49 C.F.R. Part 380 and 382 and Parts 390 through 397 (excluding section 391.69, 393.81, and 397.3), and all supplements and amendments thereto, to the extent those rules apply. Carriers transporting hazardous materials, substances, or wastes as defined herein must comply with these parts as listed below. (See N.J.A.C. 16:49-1.3(1) herein.)

5. 49 C.F.R. 390.21 is modified to state the following: A commercial motor vehicle operated in intrastate commerce shall be subject to the provisions of N.J.S.A. 39:4-46.

6. 49 C.F.R. 390-23 is modified to state the following:

The following commercial motor vehicles, operating in intrastate commerce, are exempt from this section when any emergency occurs that affects the citizens of New Jersey.

(a) Commercial motor vehicles which are owned, operated, or leased by a public or quasi-public or private entity in this State, said entity being subject to the jurisdiction of the Board of Public Utilities; or

(b) Commercial motor vehicles which are owned, operated or leased by a public or quasi-public or private entity in this State and which is or will be operated under a contract

to the State of New Jersey or a governmental or quasi-environmental entity thereof.

Such emergencies include, but are not limited to, weather and other acts of nature (e.g., snow, flooding, earthquake, power/telephone outages, disruptions to power or telephone transmission lines or facilities, supply lines or facilities for steam, water, or gas) and other emergencies (e.g., motor vehicle accidents, industrial accidents, fires, etc.).

7. 49 C.F.R. 391.21 shall not apply to persons already employed by the same carrier as of March 4, 1985.

8. 49 C.F.R. 391.23 shall apply only to drivers hired after March 4, 1985.

9. 49 C.F.R. 391.31 is modified to state the following:

The provisions of Section 391.31 do not apply to a driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of February 6, 1995, and transports hazardous material(s) requiring hazardous material(s) placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §§ 172.500 et seq.), or operates a vehicle displaying a hazardous material(s) placard.

10. 49 C.F.R. 391.41 is modified to state the following:

A driver engaged in intrastate commerce who possesses a valid New Jersey Commercial Driver License (CDL) as of September 20, 1993, but who is not physically qualified to drive under Section 391.41(b) of the subchapter may continue to drive a motor vehicle, unless the driver is transporting hazardous material requiring hazardous material placarding in accordance with Subpart F of Part 172 of the Hazardous Materials Regulations (49 C.F.R. §§ 172.500 et seq.), or is operating a vehicle displaying a hazardous material placard.

11. 49 C.F.R. 391.49(a) is modified to state the following:

(a) A person who is not physically qualified to drive under Section 391.41(b)(1) or (2), and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if that person has been granted a waiver pursuant to 49, Code of Federal Regulations, Section 391.49.

(e) The following provisions of Title 49 C.F.R. are not adopted and incorporated by reference: Subchapter B of Chapter 1, and sections 171.1, 171.4, 171.5, 171.6, 171.20, 173.32a, 179.3, 179.4, and 179.5.

Amended by R.1986 d.447, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Amended by R.1989 d.101, effective February 21, 1989.

See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Date changed from November 1, 1985 to October 1, 1987; deleted text in (a)3 "modifications are made ..."; and in (a)5 "(Section 177.825(a), ...)".

Amended by R.1990 d.550, effective November 19, 1990.

See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Part 180 added at (a)8.

Amended by R.1993 d.235, effective June 7, 1993.

See: 25 N.J.R. 1065(a), 25 N.J.R. 2497(a).

Amended by R.1995 d.74, effective February 6, 1995.

See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Amended by R.2000 d.7, effective January 3, 2000.

See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

In (a), changed date in the introductory paragraph; in (b), changed Part references in 1, 4 and 11; and in (c), inserted a reference to the Federal Hazardous Materials Regulations and changed date in the first sentence.

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

Rewrote the section.

SUBCHAPTER 3. HAZARDOUS MATERIALS RESTRICTIONS IN THE ROUTE 29 TUNNEL FACILITY

16:49-3.1 General provisions

(a) This subchapter is authorized under N.J.S.A. 39:5B-25 et seq. and shall be read and interpreted in such a manner as to be, to the greatest degree practicable, in conformance with the applicable provisions of the hazardous materials transportation laws of the United States Department of Transportation.

(b) As used in this subchapter, the phrase "Route 29 tunnel facility" shall mean both the constructed Northbound and Southbound covered portions of State Highway Route 29 located within the City of Trenton, in Mercer County, New Jersey.

16:49-3.2 Prohibitions

(a) Except as provided in N.J.A.C. 16:49-3.3, vehicles required to be placarded for hazardous materials under the provisions of 49 C.F.R. §§ 172.500 et seq. (Subpart F), as amended and supplemented, shall be prohibited from entering into or traveling through the Route 29 tunnel facility.

(b) Except as provided in N.J.A.C. 16:49-3.3, vehicles transporting one or more containers which individually hold, or are designed to individually hold, 10 or more pounds of compressed gases shall be prohibited from entering into or traveling through the Route 29 tunnel facility.

16:49-3.3 Exceptions

(a) The restrictions contained in N.J.A.C. 16:49-3.2 shall not apply to vehicles that meet one or more of the following exceptions:

1. Vehicles under the control of the New Jersey Department of Transportation, or its contractors, when such vehicles are directly involved in the maintenance, repair, or construction of the Route 29 tunnel facility or its immediate approach roadways;

2. Vehicles excepted by court order;

3. Vehicles for which the United States Department of Transportation or the United States Department of Defense has requested an exception in the name of national interest, when approved by either the Governor, the Commissioner of Transportation, the Attorney General, or the Superintendent of State Police;

4. Emergency vehicles, rescue vehicles, police vehicles, and medical response or medical patient transportation vehicles; and

5. Vehicles for which the Governor, the Commissioner of Transportation, the Attorney General, or the Superintendent of State Police orders an exception upon a finding of emergent circumstances.

16:49-3.4 Alternative through routing

Vehicles prohibited from using the Route 29 tunnel facility under the provisions of this subchapter shall utilize appropriate alternative through routing. Vehicles using alternate through routing shall conform with all applicable vehicle weight, length, width, height, operational, equipment, safety, licensing, permit, and registration requirements.

16:49-3.5 Penalties

(a) Penalties under this subchapter shall be imposed and collected in accordance with N.J.S.A. 39:5B-29, as amended and supplemented, adopted and incorporated herein by reference.

(b) The driver, owner, lessee, and bailee, jointly and severally, of any vehicle found or operated in violation of this subchapter, shall be subject to penalties in accordance with the following schedule:

1. For taking a vehicle that is required to be placarded for hazardous materials under the provisions of 49 C.F.R. Part 172, Subpart F into or through the Route 29 tunnel facility, the following penalties shall apply:

i. First offense: \$5,000;

ii. Second offense: \$10,000; and

iii. Subsequent offenses: \$25,000.

2. In those cases where (b)1 above would not be applicable, for transporting one or more containers that individually hold, or are designed to individually hold, 10 or more pounds of compressed gases into or through the Route 29 tunnel facility, the following penalty shall apply:

i. Each offense: \$500.00.

Amended by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

In (a), inserted "adopted and" following "as amended and supplemented, "; in (b), substituted "Route 29" for "Roue 29" preceding "tunnel facility" in 1.

APPENDIX

(RESERVED)

Amended by R.1986 d.447, effective November 3, 1986.

See: 18 N.J.R. 1791(a), 18 N.J.R. 2212(b).

Amended by R.1989 d.101, effective February 21, 1989.

See: 20 N.J.R. 3005(a), 21 N.J.R. 456(a).

Substantially amended.

Amended by R.1990 d.550, effective November 19, 1990.

See: 22 N.J.R. 2676(a), 22 N.J.R. 3500(c).

Reporting requirements of Section 171.15, 171.16 revised; cargo tanks added to Section 172.331; 172 Subpart G added; driver qualifications of Sections 391.49 and 391.71 revised; 391 Subpart H (Controlled Substances Testing), 393 Subpart J, 395.15, 396.17, 396.19, 396.21, 396.23, Minimum Periodic Inspection Standards, Part 180, A and E added; revisions throughout to conform to current Federal cites.

Amended by R.1991 d.485, effective October 7, 1991.

See: 23 N.J.R. 2102(a), 23 N.J.R. 3037(c).

Exception applies only to waived drivers.

Amended by R.1993 d.235, effective June 7, 1993.

See: 25 N.J.R. 1065(a), 25 N.J.R. 2497(a).

Amended by R.1995 d.74, effective February 6, 1995.

See: 26 N.J.R. 4488(b), 27 N.J.R. 509(a).

Repeal and New Rule, R.2000 d.7, effective January 3, 2000.

See: 31 N.J.R. 2692(a), 32 N.J.R. 102(a).

Appendix was "Appendix to the Regulations Regarding the Transportation of Hazardous Materials".

Administrative change.

See: 32 N.J.R. 1522(b).

Repealed by R.2005 d.163, effective May 16, 2005.

See: 37 N.J.R. 32(a), 37 N.J.R. 1784(a).

Appendix was "Appendix to the Regulations Regarding the Transportation of Hazardous Materials,"